

AMENDED IN ASSEMBLY AUGUST 7, 2006

AMENDED IN ASSEMBLY JUNE 20, 2006

AMENDED IN SENATE APRIL 21, 2005

SENATE BILL

No. 667

Introduced by Senator Migden

February 22, 2005

An act to amend Sections 10500, 10502, and 10504.5 of, and to add and repeal Article 1.5 (commencing with Section 10506.4) ~~to~~ of Chapter 2.1 of Part 2 of Division 2 of, the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 667, as amended, Migden. Public contracts: competitive bidding: University of California.

(1) Existing law requires the Regents of the University of California, except as specified, to let any contract for a project to the lowest responsible bidder. For these purposes, "project" includes the erection, construction, alteration, repair, or improvement of any University of California structure, building, road, or other improvement that will exceed in cost a total of \$50,000.

This bill would increase the threshold amount for a "project" to \$100,000.

(2) Existing law requires the Regents of the University of California to give public notice of a project to bidders by publication once a week for at least 2 consecutive weeks next preceding the day set for the receiving of bids.

This bill would instead require the regents to give public notice of a project by publication twice within the 60-day period preceding the day set for the receiving of bids.

(3) Existing law provides that where the nature of the work, in the opinion of the Regents of the University of California, is such that the application of all of specified provisions of law relating to competitive bidding by the university is not required in connection with that work, and the cost of the project does not exceed \$100,000, the regents shall solicit bids in writing and shall award the work to the lowest responsible bidder or reject all bids.

This bill would provide that the Regents of the University of California are not required to solicit bids in writing and award the contract to the lowest responsible bidder if the value of a minor capital outlay project is one for which the services of the Department of General Services are not required.

(4) Existing law authorizes the Regents of the University of California to enter into contracts for the erection, construction, alteration, repair, or improvement of a university structure and requires the regents to award contracts for projects to the lowest responsible bidder.

This bill would, until January 1, 2012, establish the Best Value Construction Contract Pilot Program, which authorizes ~~4 University of California campuses, selected by the President of the University of California, a single University of California campus located in the City and County of San Francisco~~ to award contracts based on the best value, to the university, as defined. This bill would require the university to observe specified procedures when awarding best value contracts, as provided. This bill would require, on or before January 1, 2010, the Regents of the University of California to submit a report to *the appropriate policy committees of the Legislature and the Joint Legislative Budget Committee* ~~on the Budget~~ regarding the pilot program, to include specified information.

(5) This bill requires bidders to verify specific information under oath, thereby imposing a state-mandated local program by expanding the scope of an existing crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 10500 of the Public Contract Code is
2 amended to read:

3 10500. As used in this article, “project” includes the erection,
4 construction, alteration, repair, or improvement of any University
5 of California structure, building, road, or other improvement that
6 will exceed in cost, including labor and materials, a total of one
7 hundred thousand dollars (\$100,000).

8 SEC. 2. Section 10502 of the Public Contract Code is
9 amended to read:

10 10502. The Regents of the University of California shall give
11 public notice of a project to bidders by publication twice within
12 the 60-day period preceding the day set for the receiving of bids
13 as follows:

14 (a) In one newspaper of general circulation published in the
15 county in which the major portion of the project is located and in
16 one such trade paper circulated in the county in which the major
17 portion of the work is to be done.

18 (b) The notices shall state the time and place for the receiving
19 and opening of sealed bids, describe in general terms the work to
20 be done, and describe the bidding mode by which the lowest
21 responsible bidder will be selected.

22 SEC. 3. Section 10504.5 of the Public Contract Code is
23 amended to read:

24 10504.5. Where the nature of the work, in the opinion of the
25 regents, is such that the application of all of the provisions of this
26 chapter in connection with that work is not required, and the cost
27 of the project does not exceed the value of a minor capital outlay
28 project for which, pursuant to Section 10108, the services of the
29 Department of General Services are not required, the regents
30 shall solicit bids in writing and shall award the work to the
31 lowest responsible bidder or reject all bids.

1 SEC. 4. Article 1.5 (commencing with Section 10506.4) is
2 added to Chapter 2.1 of Part 2 of Division 2 of the Public
3 Contract Code, to read:

4
5 Article 1.5. Best Value Construction Contracting Pilot
6 Program
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8 10506.4. (a) This article provides for a pilot program for the
9 University of California when awarding construction contracts,
10 applicable only to ~~those four campuses of the university as~~
11 ~~designated by the President of the University of California prior~~
12 ~~to January 1, 2007. a single University of California campus~~
13 ~~located in the City and County of San Francisco.~~

14 (b) The Regents of the University of California shall let any
15 contract for a project pursuant to this article to the lowest
16 responsible bidder or else reject all bids.

17 (c) The lowest responsible bidder may be selected on the basis
18 of the best value to the university, as defined in Section 10506.5.
19 In order to implement this method of selection, the Regents of
20 the University of California shall adopt and publish procedures
21 and required criteria that ensure that all selections are conducted
22 in a fair ~~an~~ and impartial manner. These procedures shall
23 conform to the requirements of Sections 10506.6 and 10506.7
24 and shall be mandatory for the University of California campuses
25 in the pilot program.

26 (d) If one or more of the bids is substantially equal to the
27 lowest bid, and at least one of those bidders is a disadvantaged
28 business enterprise, a women business enterprise, or a disabled
29 veteran business enterprise, the regents may award the contract in
30 accordance with the policies and procedures adopted pursuant to
31 Section 10500.5.

32 (e) If the regents deem it to be for the best interest of the
33 university, the regents may, on the refusal or failure of the
34 successful bidder for a project to execute a tendered contract,
35 award it to the second lowest responsible bidder. If the second
36 lowest bidder fails or refuses to execute the contract, the regents
37 may likewise award it to the third lowest responsible bidder.

38 10506.5. For purposes of this article, the following definitions
39 apply:

1 (a) “Best value” means a procurement process whereby the
2 lowest responsible bidder may be selected on the basis of
3 objective criteria with the resulting selection representing the
4 best combination of price and qualifications.

5 (b) “Best value contract” means a contract entered into
6 pursuant to the provisions of this article.

7 (c) “Best value contractor” means a properly licensed person,
8 firm, or corporation that submits a bid for, or is awarded, a best
9 value contract.

10 (d) “Demonstrated management competency” means the
11 experience, competency, capability, and capacity of the proposed
12 management staffing to complete projects of similar size, scope,
13 or complexity.

14 (e) “Financial condition” means the financial resources needed
15 to perform the contract. The criteria used to evaluate a bidder’s
16 financial condition shall include, at a minimum, capacity to
17 obtain all required payment bonds, performance bonds, and
18 liability insurance.

19 (f) “Labor compliance” means the ability to comply with, and
20 past performance with, contract and statutory requirements for
21 the payment of wages and qualifications of the workforce. The
22 criteria used to evaluate a bidder’s labor compliance shall
23 include, as a minimum, the bidder’s ability to comply with the
24 apprenticeship requirements of the California Apprenticeship
25 Council and the Department of Industrial Relations, its past
26 conformance with such requirements, and its past conformance
27 with requirements to pay prevailing wages on public works
28 projects.

29 (g) “Qualifications” means financial condition, relevant
30 experience, demonstrated management competency, labor
31 compliance, the safety record of the bidder, and, if required by
32 the bidding documents, some or all of the preceding
33 qualifications as they pertain to subcontractors proposed to be
34 used by the bidder for designated portions of the work.

35 (h) “Relevant experience” means the experience, competency,
36 capability, and capacity to complete projects of similar size,
37 scope, or complexity.

38 (i) “Safety record” means the prior history concerning the safe
39 performance of construction contracts. The criteria used to
40 evaluate a bidder’s safety record shall include, as a minimum, its

1 experience modification rate for the most recent three-year
2 period, and its average total recordable injury or illness rate and
3 average lost work rate for the most recent three-year period.

4 (j) “University” means the University of California.

5 10506.6. The university shall proceed in accordance with the
6 following when awarding best value contracts under this article.

7 (a) The university shall prepare a solicitation for bids and give
8 notice pursuant to Section 10502.

9 (b) The university shall establish a procedure to prequalify
10 bidders. The information required pursuant to this section shall
11 be verified under oath by the bidder in the manner in which civil
12 pleadings in civil actions are verified. Information submitted by
13 the bidder as part of the evaluation process shall not be open to
14 public inspection to the extent that information is exempt from
15 disclosure under the California Public Records Act (Chapter 3.5
16 commencing with Section 6250) of Division 7 of Title 1 of the
17 Government Code).

18 (c) Each solicitation for bids shall do all of the following:

19 (1) Invite prequalified bidders to submit sealed bids in the
20 manner prescribed by this article.

21 (2) Include a section identifying and describing the following:

22 (A) Criteria that the university will consider in evaluating bids.

23 (B) The methodology and rating or weighting system that will
24 be used by the university in evaluating bids.

25 (C) The relative importance or weight assigned to the criteria
26 identified in the request for bids.

27 (d) ~~Final selection~~ *evaluation* of the best value contractor shall
28 be done in a manner that prevents cost or price information from
29 being revealed to the committee evaluating the qualifications of
30 the bidders prior to completion and announcement of that
31 committee’s decision.

32 10506.7. Selection of the best value contractor shall be made
33 as follows:

34 (a) The university shall evaluate the qualifications of the
35 bidders based solely upon the criteria set forth in the ~~bidding~~
36 *solicitation documents, and shall assign a qualifications score to*
37 *each bid.*

38 (b) The award of the contract shall be made to the bidder
39 whose bid is determined, by the university in writing, to be the
40 best value to the university. To determine the best value

1 contractor, the university shall divide each bidder's—evaluated
2 price by its qualifications score. The lowest resulting cost per
3 quality point will represent the best value bid.

4 (c) The university shall issue a written decision of its contract
5 award.

6 (d) Upon issuance of a contract award, the university shall
7 publicly announce its award identifying the best value contractor
8 to which the award is made, the project, the project price, and the
9 selected best value—contractors's *contractor's* score based on the
10 evaluation criteria listed in the request for bids. The notice of
11 award shall be made public and include the score of the selected
12 best value contractor in relation to all other responsive bidders
13 and their respective prices. The contract file shall include
14 documentation sufficient to support the decision to award.

15 10506.8. On or before January 1, 2010, the Regents of the
16 University of California shall submit a report to *the appropriate*
17 *policy committees of the Legislature* and the Joint Legislative
18 Budget Committee. The report shall include, but is not limited to,
19 the following information:

20 (a) A description of the projects awarded using the best value
21 procedures.

22 (b) The contract award amounts.

23 (c) The best value contractors awarded the projects.

24 (d) A description of any written protests concerning any aspect
25 of the solicitation, bid, or award of the best value contracts,
26 including the resolution of the protests.

27 (e) A description of the prequalification process.

28 (f) The criteria used to evaluate the bids, including the
29 weighting of the criteria and an assessment of the effectiveness
30 of the methodology.

31 (g) If a project awarded under this article has been completed,
32 an assessment of the project performance, to include a summary
33 of any delays or cost increases.

34 10506.9. This article shall remain in effect only until January
35 1, 2012, and as of that date is repealed, unless a later enacted
36 statute, that is enacted before January 1, 2012, deletes or extends
37 that date.

38 SEC. 5. No reimbursement is required by this act pursuant to
39 Section 6 of Article XIII B of the California Constitution because
40 the only costs that may be incurred by a local agency or school

1 district will be incurred because this act creates a new crime or
2 infraction, eliminates a crime or infraction, or changes the
3 penalty for a crime or infraction, within the meaning of Section
4 17556 of the Government Code, or changes the definition of a
5 crime within the meaning of Section 6 of Article XIII B of the
6 California Constitution.

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